



State of Wisconsin


LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 09/09/2008 (Per: GMM)



Appendix A ... Pt. 06C of 09

 The 2007 drafting file for LRB-0174

has been transferred to the drafting file for

2009 LRB-0150

☛ This cover sheet, the final request sheet, and the final version of the 2007 draft were copied on yellow paper, and returned to the original 2005 drafting file.

☛ The attached 2007 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

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1 **SECTION 199.** 48.977 (4) (c) 2. of the statutes is amended to read:

2 48.977 (4) (c) 2. ~~Service~~ Except as provided in subd. 2m., service shall be made
3 by 1st class mail at least 7 days before the hearing or by personal service at least 7
4 days before the hearing or, if with reasonable diligence a party specified in subd. 1.
5 cannot be served by mail or personal service, service shall be made by publication of
6 a notice published as a class 1 notice under ch. 985. In determining which newspaper
7 is likely to give notice as required under s. 985.02 (1), the petitioner shall consider
8 the residence of the party, if known, or the residence of the relatives of the party, if
9 known, or the last-known location of the party. *or until at least 25 days after receipt of service by the U.S. Secretary of the Interior*

10 **SECTION 200.** 48.977 (4) (c) 2m. of the statutes is created to read:

11 48.977 (4) (c) 2m. If the petitioner knows or has reason to know that the child
12 is an Indian child, service under subd. 2. to the Indian child's parent *(Indian custodian and tribe)* shall be provided
13 in the manner specified in s. 48.028 (4) (a). ~~In like manner, the petitioner shall also~~
14 ~~provide service to the Indian child's Indian custodian and tribe.~~ No hearing may be
15 held under par. (cm) until at least 10 days after receipt of service by the Indian child's
16 parent, Indian custodian, and tribe. On request of the Indian child's parent, Indian
17 custodian, or tribe, the court shall grant a continuance of up to 20 additional days
18 to enable the requester to prepare for the hearing.

19 ~~**SECTION 201.** 48.977 (4) (d) of the statutes is amended to read:~~

20 ~~48.977 (4) (d) *Fact-finding hearing.* The court shall hold a fact-finding hearing~~
21 ~~on the petition on the date set by the court under par. (cm) 3., at which any party may~~
22 ~~present evidence relevant to the issue of whether the conditions specified in sub. (2)~~
23 ~~(a) to (f) (g) have been met. If the court, at the conclusion of the fact-finding hearing,~~
24 ~~finds by clear and convincing evidence that the conditions specified in sub. (2) (a) to~~
25 ~~(f) (g) have been met, the court shall immediately proceed to a dispositional hearing~~

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SECTION 201

unless the court finds good cause, ^{as is} described in s. 48.028 (7)(c), for ^{departing} departing from that order

1 unless an adjournment is requested. If a party requests an adjournment, the court
2 shall set a date for the dispositional hearing which allows reasonable time for the
3 parties to prepare but is no more than 30 days after the fact-finding hearing.

4 SECTION 202. 48.977 (4) (g) 4. of the statutes is created to read:

5 48.977 (4) (g) 4. If the child is an Indian child, the order of placement preference
6 under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c)

7 SECTION 203. 48.978 (2) (b) 11. of the statutes is amended to read:

8 48.978 (2) (b) 11. A statement of whether the child may be subject to the federal
9 Indian Child Welfare Act, 25 USC 1911 to 1963, and, if the child may be subject to
10 that act, the names and addresses of the child's Indian custodian, if any, and Indian
11 tribe, if known.

renumbered 48.02 (2)(g)

12 ^{Insert 9-12} ^{as: PLS chg compl} SECTION 204. 48.981 (1) (es) of the statutes is repealed

13 SECTION 205. 48.981 (1) (i) of the statutes is amended to read:

14 48.981 (1) (i) "Tribal agent" means the person designated under 25 CFR 23.12
15 by an Indian tribe ^{or band} to receive notice of involuntary child custody proceedings
16 under the Indian child welfare act federal Indian Child Welfare Act, 25 USC 1901
17 to 1963.

(7) tribe

18 ^{that} SECTION 206. 48.981 (3) (bm) (intro.) of the statutes is amended to read:

19 48.981 (3) (bm) *Notice of report to Indian tribal agent.* (intro.) In a county
20 which has wholly or partially within its boundaries a ~~federally recognized Indian~~
21 reservation or a bureau of Indian affairs service area for the Ho-Chunk tribe, if a
22 county department ^{that} ~~which~~ receives a report under par. (a) pertaining to a child or
23 unborn child knows or has reason to know that the child is an Indian child who
24 resides in the county or that the unborn child is an Indian unborn child whose
25 expectant mother resides in the county, the county department shall provide notice,

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Indian

1 which shall consist only of the name and address of the child or expectant mother and
2 the fact that a report has been received about that child or unborn child, within 24
3 hours to one of the following:

4 **SECTION 207.** 48.981 (3) (bm) 1. of the statutes is amended to read:

5 48.981 (3) (bm) 1. If the county department knows ~~with which the Indian tribe~~
6 ~~or band of which~~ the child is affiliated a member, or ~~with which the Indian tribe or~~
7 ~~band in which~~ the unborn child, when born, may be eligible for affiliation
8 membership, and it is a Wisconsin Indian tribe or band, the tribal agent of that tribe
9 or band.

10 **SECTION 208.** 48.981 (3) (bm) 2. of the statutes is amended to read:

11 48.981 (3) (bm) 2. If the county department does not know ~~with which the~~
12 ~~Indian tribe or band of which~~ the child is affiliated a member, or ~~with which the~~
13 ~~Indian tribe or band in which~~ the unborn child, when born, may be eligible for
14 affiliation membership, or the child or expectant mother is not affiliated with a
15 member of a Wisconsin Indian tribe or band, the tribal agent serving the reservation
16 or Ho-Chunk service area where the child or expectant mother resides.

17 **SECTION 209.** 48.981 (7) (a) 2. of the statutes is amended to read:

18 48.981 (7) (a) 2. Appropriate staff of an agency or a tribal ~~social services~~ child
19 welfare department.

20 **SECTION 210.** 48.981 (7) (a) 10m. of the statutes is amended to read:

21 48.981 (7) (a) 10m. A tribal court, or other adjudicative body authorized by a
22 ~~tribe or band~~ an Indian tribe to perform child welfare functions, that exercises
23 jurisdiction over children and unborn children alleged to be in need of protection or
24 services for use in proceedings in which abuse or neglect of the child who is the

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1 subject of the report or record or abuse of the unborn child who is the subject of the
2 report or record is an issue.

3 **SECTION 211.** 48.981 (7) (a) 10r. of the statutes is amended to read:

4 48.981 (7) (a) 10r. A tribal court, or other adjudicative body authorized by a
5 ~~tribe or band~~ an Indian tribe to perform child welfare functions, that exercises
6 jurisdiction over children alleged to be in need of protection or services for use in
7 proceedings in which an issue is the substantial risk of abuse or neglect of a child
8 who, during the time period covered by the report or record, was in the home of the
9 child who is the subject of the report or record.

10 **SECTION 212.** 48.981 (7) (a) 11m. of the statutes is amended to read:

11 48.981 (7) (a) 11m. An attorney representing the interests of an Indian tribe
12 ~~or band~~ in proceedings under subd. 10m. or 10r., of an Indian child in proceedings
13 under subd. 10m. or 10r. or of an Indian unborn child in proceedings under subd.
14 10m.

15 **SECTION 213.** 48.981 (7) (am) of the statutes is amended to read:

16 48.981 (7) (am) Notwithstanding par. (a) (intro.), a tribal agent who receives
17 notice under sub. (3) (bm) may disclose the notice to a tribal ~~social services~~ child
18 welfare department.

19 **SECTION 214.** 48.981 (8) (a) of the statutes is amended to read:

20 48.981 (8) (a) The department, the county departments, and a licensed child
21 welfare agency under contract with the department in a county having a population
22 of 500,000 or more to the extent feasible shall conduct continuing education and
23 training programs for staff of the department, the county departments, licensed
24 child welfare agencies under contract with the department or a county department,
25 law enforcement agencies, and the tribal social services child welfare departments.

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persons and officials required to report, the general public, and others as appropriate. The programs shall be designed to encourage reporting of child abuse and neglect and of unborn child abuse, to encourage self-reporting and voluntary acceptance of services and to improve communication, cooperation, and coordination in the identification, prevention, and treatment of child abuse and neglect and of unborn child abuse. Programs provided for staff of the department, county departments, and licensed child welfare agencies under contract with county departments or the department whose responsibilities include the investigation or treatment of child abuse or neglect shall also be designed to provide information on means of recognizing and appropriately responding to domestic abuse, as defined in s. 46.95 (1) (a). The department, the county departments, and a licensed child welfare agency under contract with the department in a county having a population of 500,000 or more shall develop public information programs about child abuse and neglect and about unborn child abuse.

SECTION 215. 822.015 of the statutes is amended to read:

822.015 Custody of Indian children. The Indian child welfare act federal Indian Child Welfare Act, 25 USC 1911 to 1963, supersedes the provisions of this chapter in any child custody proceeding governed by that act, except that in any case in which this chapter provides a higher standard of protection for the rights of an Indian child's parent or Indian custodian or ~~or~~ than the rights provided under that act, the court shall apply the standard under this chapter.

SECTION 216. 938.02 (8d) of the statutes is created to read:

938.02 (8d) "Indian" means any person who is a member of an Indian tribe or who is an Alaska native and a member of a regional corporation, as defined in 43 USC 1606.

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SECTION 217

affiliated with an Indian tribe in any

1 SECTION 217. 938.02 (8g) of the statutes is created to read:

2 938.02 (8g) "Indian juvenile" means an unmarried person who is under 18
3 years of age and who is ~~one~~ of the following: *ways*

4 (a) ~~A~~ member of ~~an~~ Indian tribe. *As a*

5 (b) ~~Eligible~~ for membership in ~~a~~ Indian tribe and ~~is~~ the biological child of a
6 member of ~~a~~ Indian tribe. *the* *As a person who is eligible*

7 SECTION 218. 938.02 (8m) of the statutes is created to read:

8 938.02 (8m) "Indian juvenile's tribe" means one of the following:

9 (a) The Indian tribe in which an Indian juvenile is a member or eligible for
10 membership.

11 (b) In the case of an Indian juvenile who is a member of or eligible for
12 membership in more than one tribe, the Indian tribe with which the Indian juvenile
13 has the more significant contacts.

14 SECTION 219. 938.02 (8p) of the statutes is created to read:

15 938.02 (8p) "Indian custodian" means an Indian person who has legal custody
16 of an Indian juvenile under tribal law or custom or under state law or to whom
17 temporary physical care, custody, and control has been transferred by the parent of
18 the juvenile.

19 SECTION 220. 938.02 (8r) of the statutes is created to read:

20 938.02 (8r) "Indian tribe" means any Indian tribe, band, nation, or other
21 organized group or community of Indians that is recognized as eligible for the
22 services provided to Indians by the U.S. secretary of the interior because of Indian
23 status, including any Alaska native village, as defined in 43 USC 1602 (c).

24 SECTION 221. 938.02 (9m) of the statutes is renumbered 938.02 (8b).

25 SECTION 222. 938.02 (10m) of the statutes is amended to read:

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938.02 (10m) "Juvenile", when used without further qualification, means a person who is less than 18 years of age, except that for purposes of investigating or prosecuting a person who is alleged to have violated a state or federal criminal law or any civil law or municipal ordinance, "juvenile" does not include a person who has attained 17 years of age.

SECTION 223. 938.02 (12m) of the statutes is amended to read:

938.02 (12m) "Off-reservation trust land" means land in this state that is held in trust by the federal government for the benefit of a an Indian tribe or an American Indian individual and that is located outside the boundaries of ~~a~~ an Indian tribe's reservation.

SECTION 224. 938.02 (13) of the statutes is amended to read:

938.02 (13) "Parent" means either a biological parent, a husband who has consented to the artificial insemination of his wife under s. 891.40, or a parent by adoption, including, in the case of an Indian juvenile, an adoption under tribal law or custom. If the juvenile is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.803, "parent" includes a person acknowledged under s. 767.805 or a substantially similar law of another state or adjudicated to be the biological father. "Parent" does not include any person whose parental rights have been terminated.

Juvenile

SECTION 225. 938.02 (15) of the statutes is amended to read:

938.02 (15) "Relative" means a parent, stepparent, brother, sister, stepbrother, stepsister, half brother, half sister, brother-in-law, sister-in-law, first cousin, 2nd cousin, nephew, niece, uncle, aunt, stepuncle, steppaunt, or any person of a preceding generation as denoted by the prefix of grand, great, or great-great, whether by blood, marriage, or legal adoption, or the spouse of any person named in this subsection,

For purposes of the application of s. 938.02 and the Federal Indian Child Welfare Act, 26 U.S.C. 1901 to 1963, "parent" includes an Indian person who has lawfully adopted an Indian child, including an adoption under tribal law or custom, but does not include a parent by adoption who is not an Indian person.

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1 even if the marriage is terminated by death or divorce. "Relative" also includes, in
2 the case of an Indian juvenile, an extended family member, as defined in s. 938.028
3 (2) (a), whether by blood, marriage, or adoption, including adoption under tribal law
4 or custom.

5 **SECTION 226.** 938.02 (15c) of the statutes is repealed and recreated to read:

6 938.02 (15c) "Reservation" means Indian country, as defined in 18 USC 1151,
7 or any land not covered under that section to which the title is either held by the
8 United States in trust for the benefit of an Indian tribe or individual or held by an
9 Indian tribe or individual, subject to a restriction by the United States against
10 alienation.

11 **SECTION 227.** 938.02 (18g) of the statutes is repealed.

12 **SECTION 228.** 938.02 (18j) of the statutes is created to read:

13 938.02 (18j) "Tribal court" means a court that has jurisdiction over juvenile
14 custody proceedings, and that is either a court of Indian offenses or a court
15 established and operated under the code or custom of an Indian tribe, or any other
16 administrative body of an Indian tribe that is vested with authority over Indian
17 juvenile custody proceedings.

18 **SECTION 229.** 938.028 of the statutes is repealed and recreated to read:

19 **938.028 Indian juvenile welfare. (1) DECLARATION OF POLICY.** In Indian
20 juvenile custody proceedings, the best interests of the Indian juvenile shall be
21 determined consistent with the federal Indian Child Welfare Act, 25 USC 1901 to
22 1963. It is the policy of this state to do all of the following:

23 (a) Cooperate fully with Indian tribes in order to ensure that the federal Indian
24 Child Welfare Act is enforced in this state.

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(b) Protect the best interests of Indian juveniles and promote the stability and security of Indian tribes and families by doing all of the following:

1. Establishing minimum standards for the removal of Indian juveniles from their families and the placement of those juveniles in out-of-home care placements that will reflect the unique value of Indian culture.

2. Using practices, in accordance with the federal Indian Child Welfare Act, 25 USC 1901 to 1963, this section, and other applicable law, that are designed to prevent the voluntary or involuntary out-of-home care placement of Indian juveniles and, when an out-of-home care placement is necessary, placing an Indian juvenile ~~to the~~ greatest extent possible in a placement that reflects the unique values of the Indian juvenile's tribal culture and that is best able to assist the Indian juvenile in establishing, developing, and maintaining a political, cultural, and social relationship with the Indian juvenile's tribe and tribal community.

(2) DEFINITIONS. In this section:

(a) "Extended family member" means a person who is defined as a member of an Indian juvenile's extended family by the law or custom of the Indian juvenile's tribe or, in the absence of such a law or custom, a person who has attained the age of 18 years and who is the Indian juvenile's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first cousin, 2nd cousin, or stepparent.

(b) "Indian juvenile custody proceeding" means a proceeding under s. 938.13 (4), (6), (6m), or (7) that is governed by the federal Indian Child Welfare Act, 25 USC 1901 to 1963, in which an out-of-home care placement may occur.

(c) "Out-of-home care placement" means the removal of an Indian juvenile from his or her parent or Indian custodian for temporary placement in a foster home, treatment foster home, group home, residential care center for children and youth,

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1 or shelter care facility, in the home of a relative other than a parent, or in the home
2 of a guardian, from which placement the parent or Indian custodian cannot have the
3 juvenile returned upon demand.

4 (d) "Qualified expert witness" means a person who is any of the following:

5 1. A member of the Indian juvenile's tribe recognized by the Indian juvenile's
6 tribal community as knowledgeable regarding the tribe's customs relating to family
7 organization or child-rearing practices.

8 ^{who is} 2. A member of another tribe ~~formally recognized by the Indian juvenile's tribe~~
9 ~~as~~ knowledgeable regarding the customs of the Indian juvenile's tribe relating to
10 family organization or child-rearing practices.

11 3. A professional person ~~recognized by the Indian juvenile's tribe as~~ having
12 substantial education and experience in the person's professional speciality and
13 having extensive knowledge of the customs, traditions, and values of the Indian
14 juvenile's tribe relating to family organization and child-rearing practices.

15 4. A layperson ~~recognized by the Indian juvenile's tribe as~~ having substantial
16 experience in the delivery of juvenile and family services to Indians and substantial
17 knowledge of the prevailing social and cultural standards and child-rearing
18 practices of the Indian juvenile's tribe.

19 (3) JURISDICTION OVER INDIAN JUVENILE CUSTODY PROCEEDINGS. (a) *Applicability.*

20 This section and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, apply
21 to any Indian juvenile custody proceeding regardless of whether the Indian juvenile
22 is in the legal custody or physical custody of an Indian parent, Indian custodian,
23 extended family member, or other person at the commencement of the proceeding
24 and whether the Indian juvenile resides or is domiciled on or off of a reservation. A
25 court assigned to exercise jurisdiction under this chapter may not determine

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1 whether this section and the federal Indian Child Welfare Act, 25 USC 1901 to 1963,
2 apply to an Indian juvenile custody proceeding based on whether the Indian juvenile
3 is part of an existing Indian family.

4 (b) *Exclusive tribal jurisdiction.* 1. An Indian tribe shall have exclusive
5 jurisdiction over any Indian juvenile custody proceeding involving an Indian
6 juvenile who resides or is domiciled within the reservation of the tribe, except when
7 that jurisdiction is otherwise vested in the state by federal law and except as
8 provided in subd. 2. If an Indian juvenile is a ward of a tribal court, the Indian tribe
9 shall retain exclusive jurisdiction regardless of the residence or domicile of the
10 juvenile.

11 2. Subdivision 1. does not prevent an Indian juvenile who resides or is domiciled
12 within a reservation, but who is temporarily located off the reservation, from being
13 taken into and held in custody under ss. 938.19 to 938.21 in order to prevent
14 imminent physical harm or damage to the Indian juvenile. The person taking the
15 Indian juvenile into custody or the intake worker shall immediately release the
16 Indian juvenile from custody upon determining that holding the Indian juvenile in
17 custody is no longer necessary to prevent imminent physical damage or harm to the
18 Indian juvenile and shall expeditiously restore the Indian juvenile to his or her
19 parent or Indian custodian, release the Indian juvenile to an appropriate official of
20 the Indian juvenile's tribe, or initiate an Indian juvenile custody proceeding, as may
21 be appropriate.

22 (c) *Transfer of proceedings to tribe.* In any Indian juvenile custody proceeding
23 under this chapter involving an out-of-home placement of an Indian juvenile who
24 is not residing or domiciled within the reservation of the Indian juvenile's tribe, the
25 court assigned to exercise jurisdiction under this chapter shall, upon the petition of

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Indian juvenile's tribe does not have a
tribal court or

the Indian juvenile's parent, Indian custodian, or tribe, transfer the proceeding to the jurisdiction of the tribe unless any of the following applies:

1. A parent of the Indian juvenile objects to the transfer.

2. The tribal court of the Indian juvenile's tribe declines jurisdiction.

3. The court determines that good cause exists to deny the transfer. The court may determine that good cause exists to deny the transfer only if the person opposing the transfer shows to the satisfaction of the court that the evidence or testimony necessary to decide the case cannot be presented in tribal court without undue hardship to the parties or the witnesses and that the tribal court is unable to mitigate the hardship by making arrangements to receive the evidence or testimony by use of telephone or live audiovisual means, by hearing the evidence or testimony at a location that is convenient to the parties and witnesses, or by use of other means permissible under the tribal court's rules of evidence.

(d) *Declination of jurisdiction.* If the court assigned to exercise jurisdiction under this chapter determines that the petitioner in an Indian juvenile custody proceeding has improperly removed the Indian juvenile from the custody of his or her parent or Indian custodian or has improperly retained custody of the Indian juvenile after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over the petition and immediately return the Indian juvenile to the custody of the parent or Indian custodian, unless the court determines that returning the Indian juvenile to his or her parent or Indian custodian would subject the Indian juvenile to substantial and immediate danger or the threat of that danger.

(e) *Intervention.* An Indian juvenile's Indian custodian or tribe may intervene at any point in an Indian juvenile custody proceeding under this chapter.

any & the following
a. That the Indian juvenile is 12 years of age or over
and objects to the transfer
b. That

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Notice & subsequent hearings in a stage of a proceeding shall be in writing and may be given by mail, personal delivery, or facsimile transmission, but not by electronic mail.

(f) *Full faith and credit.* The state shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe that are applicable to an Indian juvenile custody proceeding to the same extent that the state gives full faith and credit to the public acts, records, and judicial proceedings of any other governmental entity. *for the first hearing at every stage of the proceeding*

(4) COURT PROCEEDINGS. (a) *Notice.* In any involuntary proceeding under s. 938.13 (4), (6), (6m), or (7) involving the out-of-home care placement of a juvenile whom the court knows or has reason to know is an Indian juvenile, the court or party seeking the out-of-home care placement shall notify the Indian juvenile's parent, Indian custodian, and tribe, by *certified* ~~registered~~ mail ~~return receipt requested~~ of the pending proceeding and of their right to intervene in the proceeding. If the identity or location of the Indian juvenile's parent, Indian custodian, or tribe cannot be determined, that notice shall be given to the U.S. secretary of the interior in like manner. The next hearing in the proceeding may not be held until at least 10 days after receipt of the notice by the parent, Indian custodian, and tribe. On request of the parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for that hearing.

(b) *Appointment of counsel.* Whenever an Indian juvenile is the subject of a proceeding under s. 938.13 (4), (6), (6m), or (7) involving the removal of the Indian juvenile from his or her home or the placement of the Indian juvenile in an out-of-home care placement, the Indian juvenile's parent or Indian custodian *upon* ~~a determination of indigency as provided in s. 938.23 (4)~~ shall have the right to be represented by court-appointed counsel. *as provided in s. 938.23 (2g)* The court may also, in its discretion, *(1m) or* appoint counsel for the Indian juvenile under s. 938.23 (3) if the court finds that the appointment is in the best interests of the Indian juvenile.

or until at least 25 days after receipt of the notice by the U. S. Secretary of the interior

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1 (c) *Examination of reports and other documents.* Each party to a proceeding
2 under s. 938.13 (4), (6), (6m), or (7) involving the out-of-home care placement of an
3 Indian juvenile shall have the right to examine all reports or other documents filed
4 with the court upon which any decision with respect to the out-of-home care
5 placement may be based.

6 (d) *Out-of-home care placement; serious damage and active efforts.* The court
7 may not order an Indian juvenile who is in need of protection or services under s.
8 938.13 (4), (6), (6m), or (7) to be placed in an out-of-home care placement unless all
9 of the following occur:

10 1. The court finds by clear and convincing evidence, including the testimony
11 of one or more qualified expert witnesses chosen in the order of preference listed in
12 par. (e), that continued custody of the Indian juvenile by the parent or Indian
13 custodian is likely to result in serious emotional or physical damage to the juvenile.

14 2. The court finds by clear and convincing evidence that active efforts, as
15 described in par. (f), have been made to provide remedial services and rehabilitation
16 programs designed to prevent the breakup of the Indian family and that those efforts
17 have proved unsuccessful. The court shall make that finding notwithstanding that
18 a circumstance specified in s. 938.355 (2d) (b) 1. to 4. applies.

19 (e) *Qualified expert witness; order of preference.* A qualified expert witness
20 shall be chosen in the following order of preference:

21 1. A member of the Indian juvenile's tribe described in sub. (2) (d) 1.

22 2. A member of another tribe described in sub. (2) (d) 2.

23 3. A professional person described in sub. (2) (d) 3.

24 4. A layperson described described in sub. (2) (d) 4.

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1 (f) *Active efforts standard.* The court may not order an Indian juvenile to be
2 placed in an out-of-home care placement unless the evidence of active efforts under
3 par. (d) 2. shows that there has been a vigorous and concerted level of case work
4 beyond the level that typically constitutes reasonable efforts, as described in s.
5 938.355 (2c). The active efforts shall be made in a manner that takes into account
6 the prevailing social and cultural values, conditions, and way of life of the Indian
7 juvenile's tribe and that utilizes the available resources of the Indian juvenile's tribe,
8 tribal and other Indian child welfare agencies, extended family members of the
9 Indian juvenile, and other individual Indian caregivers. The court's consideration
10 of whether active efforts were made under par. (d) 2. shall include whether all of the
11 following activities were conducted: *at the earliest possible point in the proceeding*

12 1. The Indian juvenile's tribe was requested to convene traditional and
13 customary support, actions, and services to resolve the Indian family's issues.

14 2. Representatives of the Indian juvenile's tribe were identified, notified, and
15 invited to participate in all aspects of the Indian juvenile custody proceeding.

16 3. Extended family members of the Indian juvenile were consulted to identify
17 and provide family structure and support for the Indian juvenile.

18 4. Frequent visitation was made to the Indian juvenile's home.

19 5. Contact was made with extended family members of the Indian juvenile to
20 assure appropriate cultural connections.

21 6. All family preservation alternatives appropriate to the Indian juvenile's
22 tribe were exhausted.

23 7. Community resources offering housing, financial, and transportation
24 assistance were identified, information about those resources was provided to the

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1 Indian family, and the Indian family was actively assisted in accessing those
2 resources.

3 (5) INVALIDATION OF ACTION. Any Indian juvenile in need of protection or services
4 under s. 938.13 (4), (6), (6m), or (7) who is the subject of an out-of-home care
5 placement, any parent or Indian custodian from whose custody that Indian juvenile
6 was removed, or the Indian juvenile's tribe may move the court to invalidate that
7 out-of-home care placement on the grounds that the out-of-home care placement
8 was made in violation of sub. (3) or (4) or 25 USC 1911 or 1912. If the court finds that
9 those grounds exist, the court shall invalidate the out-of-home care placement and
10 order the Indian juvenile to be returned to his or her parent or Indian custodian.

11 (6) PLACEMENT OF INDIAN JUVENILE. (a) *Out-of-home care placement;* to (d)
12 preferences. Any Indian juvenile in need of protection or services under s. 938.13 (4),
13 (6), (6m), or (7) who is placed in an out-of-home care placement shall be placed in
14 the least restrictive setting that most approximates a family, that meets the Indian
15 juvenile's special needs, if any, and that is within reasonable proximity to the Indian
16 juvenile's home, taking into account those special needs. Subject to pars. (b) and (c),
17 in placing such an Indian juvenile in an out-of-home care placement, preference
18 shall be given, in the absence of good cause to the contrary, to a placement in one of
19 the following, in the order of preference listed:

- 20 1. The home of an extended family member of the Indian juvenile.
- 21 2. A foster home or treatment foster home licensed, approved, or specified by
22 the Indian juvenile's tribe.
- 23 3. An Indian foster home or treatment foster home licensed or approved by the
24 department, a county department, or a child welfare agency.

as described in para (d),

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1 4. A group home or residential care center for children and youth approved by
2 an Indian tribe or operated by an Indian organization that has a program suitable
3 to meet the needs of the Indian juvenile. *↑ as described in par (d)*

4 (b) *Tribal or personal preferences.* If the Indian juvenile's tribe has established,
5 by resolution, an order of preference that is different from the order specified in par.

6 (a), the order of preference established by that tribe shall be followed, in the absence
7 of good cause to the contrary, so long as the placement is the least restrictive setting
8 appropriate for the Indian juvenile's needs as specified in par. (a). When appropriate,
9 the preference of the Indian juvenile or parent shall be considered, and, when a
10 parent who has consented to the placement evidences a desire for anonymity, that
11 desire shall be given weight, in determining the placement.

12 (c) *Social and cultural standards.* The standards to be applied in meeting the
13 placement preference requirements of this subsection shall be the prevailing social
14 and cultural standards of the Indian community in which the Indian juvenile's
15 parents or extended family members reside or with which the Indian juvenile's
16 parents or extended family members maintain social and cultural ties.

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17 (d) *Report of placement.* The department of health and family services, a county
18 department, or a child welfare agency shall maintain a record of each out-of-home
19 care placement made of an Indian juvenile who is in need of protection or services
20 under s. 938.13 (4), (6), (6m), or (7), evidencing the efforts made to comply with the
21 placement preference requirements specified in this subsection, and shall make that
22 record available at any time on the request of the U.S. secretary of the interior or the
23 Indian juvenile's tribe.

24 (7) RETURN OF CUSTODY; REMOVAL FROM OUT-OF-HOME CARE PLACEMENT. If an
25 Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m),

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SECTION 229

1 or (7) is removed from an out-of-home care placement for the purpose of placing the
2 Indian juvenile in another out-of-home care placement, a preadoptive placement,
3 as defined in s. 48.028 (2) (f), or an adoptive placement, as defined in s. 48.028 (2) (a),
4 the placement shall be made in accordance with this section and s. 48.028. Removal
5 of such an Indian juvenile from an out-of-home care placement for the purpose of
6 returning the Indian juvenile to the home of the parent or Indian custodian from
7 whose custody the Indian juvenile was originally removed is not subject to this
8 section.

9 (8) HIGHER STATE OR FEDERAL STANDARD APPLICABLE. The federal Indian Child
10 Welfare Act, 25 USC 1911 to 1963, supersedes this chapter in any Indian juvenile
11 custody proceeding governed by that act, except that in any case in which this
12 chapter provides a higher standard of protection for the rights of an Indian juvenile's
13 parent or Indian custodian ~~or in~~ than the rights provided under that act, the court
14 shall apply the standard under this chapter.

15 (9) RULES. The department shall promulgate rules to implement and
16 administer this section and the federal Indian Child Welfare Act, 25 USC 1901 to
17 1963.

18 **SECTION 230.** 938.13 (intro.) of the statutes is amended to read:

19 **938.13 Jurisdiction over juveniles alleged to be in need of protection**
20 **or services.** (intro.) The Except as provided in s. 938.028 (3), the court has exclusive
21 original jurisdiction over a juvenile alleged to be in need of protection or services
22 which can be ordered by the court if any of the following conditions applies:

23 **SECTION 231.** 938.15 of the statutes is amended to read:

24 **938.15 Jurisdiction of other courts to determine legal custody.** Nothing
25 Except as provided in s. 938.028 (3), nothing in this chapter deprives another court

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1 of the right to determine the legal custody juvenile by habeas corpus or to determine
2 the legal custody or guardianship of a juvenile if the legal custody or guardianship
3 is incidental to the determination of an action pending in that court. But Except as
4 provided in s. 938.028 (3), the jurisdiction of the court assigned to exercise
5 jurisdiction under this chapter and ch. 48 is paramount in all cases involving
6 juveniles alleged to come within the provisions of ss. 938.12 to 938.14.

7 **SECTION 232.** 938.185 (4) (title) of the statutes is amended to read:

8 938.185 (4) (title) ~~AMERICAN~~ INDIAN JUVENILES.

9 **SECTION 233.** 938.185 (4) (intro.) of the statutes is amended to read:

10 938.185 (4) (intro.) Venue for a proceeding under s. 938.12 or 938.13 (12) based
11 on an allegation that an ~~American~~ Indian juvenile has committed a delinquent act
12 may not be in the county specified in sub. (1) (a), unless that county is specified in
13 sub. (1) (b) or (c), if all of the following circumstances apply:

14 **SECTION 234.** 938.185 (4) (a) of the statutes is amended to read:

15 938.185 (4) (a) At the time of the alleged delinquent act the juvenile was under
16 an order of a tribe's tribal court, other than a tribal court order relating to adoption,
17 physical placement or visitation with the juvenile's parent, or permanent
18 guardianship.

19 **SECTION 235.** 938.185 (4) (b) of the statutes is amended to read:

20 938.185 (4) (b) At the time of the alleged delinquent act the juvenile was
21 physically outside the boundaries of ~~that tribe's~~ the reservation of the Indian tribe
22 of the tribal court and any off-reservation trust land of either that Indian tribe or a
23 member of that Indian tribe as a direct consequence of a tribal court order under par.
24 (a), including a tribal court order placing the juvenile in the home of a relative of the

BILL**SECTION 235**

1 juvenile who on or after the date of the tribal court order resides physically outside
2 the boundaries of a reservation and off-reservation trust land.

3 **SECTION 236.** 938.19 (2) of the statutes is amended to read:

4 938.19 (2) NOTIFICATION OF PARENT, GUARDIAN, LEGAL CUSTODIAN, INDIAN
5 CUSTODIAN. When a juvenile is taken into physical custody under this section, the
6 person taking the juvenile into custody shall immediately attempt to notify the
7 parent, guardian, and legal custodian, and Indian custodian of the juvenile by the
8 most practical means. The person taking the juvenile into custody shall continue
9 such attempt until the parent, guardian, and legal custodian, and Indian custodian
10 of the juvenile are notified, or the juvenile is delivered to an intake worker under s.
11 938.20 (3), whichever occurs first. If the juvenile is delivered to the intake worker
12 before the parent, guardian, and legal custodian, and Indian custodian are notified,
13 the intake worker, or another person at his or her direction, shall continue the
14 attempt to notify until the parent, guardian, and legal custodian, and Indian
15 custodian of the juvenile are notified.

16 **SECTION 237.** 938.20 (2) (ag) of the statutes is amended to read:

17 938.20 (2) (ag) Except as provided in pars. (b) to (g), a person taking a juvenile
18 into custody shall make every effort to release the juvenile immediately to the
19 juvenile's parent, guardian or, legal custodian, or Indian custodian.

20 **SECTION 238.** 938.20 (2) (b) of the statutes is amended to read:

21 938.20 (2) (b) If the juvenile's parent, guardian or, legal custodian, or Indian
22 custodian is unavailable, unwilling, or unable to provide supervision for the juvenile,
23 the person who took the juvenile into custody may release the juvenile to a
24 responsible adult after counseling or warning the juvenile as may be appropriate.

25 **SECTION 239.** 938.20 (3) of the statutes is amended to read:

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1 938.20 (3) NOTIFICATION TO PARENT, GUARDIAN, LEGAL CUSTODIAN, INDIAN
2 CUSTODIAN OF RELEASE. If the juvenile is released under sub. (2) (b) to (d) or (g), the
3 person who took the juvenile into custody shall immediately notify the juvenile's
4 parent, guardian, and legal custodian, and Indian custodian of the time and
5 circumstances of the release and the person, if any, to whom the juvenile was
6 released. If the juvenile is not released under sub. (2), the person who took the
7 juvenile into custody shall arrange in a manner determined by the court and law
8 enforcement agencies for the juvenile to be interviewed by the intake worker under
9 s. 938.067 (2). The person who took the juvenile into custody shall make a statement
10 in writing with supporting facts of the reasons why the juvenile was taken into
11 physical custody and shall give a copy of the statement to the intake worker and to
12 any juvenile 10 years of age or older. If the intake interview is not done in person,
13 the report may be read to the intake worker.

14 **SECTION 240.** 938.20 (7) (c) 1. of the statutes is amended to read:

15 938.20 (7) (c) 1. To a parent, guardian, ~~or~~ legal custodian, or Indian custodian,
16 or to a responsible adult if the parent, guardian, ~~or~~ legal custodian, or Indian
17 custodian is unavailable, unwilling, or unable to provide supervision for the juvenile,
18 counseling or warning the juvenile as may be appropriate; or, if the juvenile is 15
19 years of age or older, without immediate adult supervision, counseling or warning
20 the juvenile as may be appropriate.

21 **SECTION 241.** 938.20 (7) (d) of the statutes is amended to read:

22 938.20 (7) (d) If the juvenile is released from custody, the intake worker shall
23 immediately notify the juvenile's parent, guardian ~~and~~, legal custodian, and Indian
24 custodian of the time and circumstances of the release and the person, if any, to whom
25 the juvenile was released.

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SECTION 242

~~Repeal of Indigency~~

1 **SECTION 242.** 938.20 (8) (a) of the statutes is amended to read:

2 938.20 (8) (a) If a juvenile is held in custody, the intake worker shall notify the
3 juvenile's parent, guardian, and legal custodian, and Indian custodian of the reasons
4 for holding the juvenile in custody and of the juvenile's whereabouts unless there is
5 reason to believe that notice would present imminent danger to the juvenile. The
6 parent, guardian, and legal custodian, and Indian custodian shall also be notified of
7 the time and place of the detention hearing required under s. 938.21, the nature and
8 possible consequences of the hearing, and the right to present and cross-examine
9 witnesses at the hearing, and, in the case of a parent or Indian custodian of an Indian
10 juvenile, the right to counsel under s. 938.028 (4) (b) regardless of ability to pay. If
11 the parent, guardian, or legal custodian, or Indian custodian is not immediately
12 available, the intake worker or another person designated by the court shall provide
13 notice as soon as possible.

14 **SECTION 243.** 938.21 (2) (title) of the statutes is amended to read:

15 938.21 (2) (title) PROCEEDINGS CONCERNING RUNAWAY OR DELINQUENT JUVENILES.

16 **SECTION 244.** 938.21 (2) (ag) of the statutes is amended to read:

17 938.21 (2) (ag) Proceedings concerning a juvenile who comes within the
18 jurisdiction of the court under s. 938.12 or 938.13 ~~(7) or (12) or (14)~~ shall be conducted
19 according to this subsection.

20 **SECTION 245.** 938.21 (3) (ag) of the statutes is amended to read:

21 938.21 (3) (ag) Proceedings concerning a juvenile who comes within the
22 jurisdiction of the court under s. 938.13 (4), (6), (6m), or (14) (7) shall be conducted
23 according to this subsection.

24 **SECTION 246.** 938.21 (3) (am) of the statutes is amended to read:

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1 938.21 (3) (am) The parent, guardian, ~~or~~ legal custodian, or Indian custodian
2 may waive his or her right to participate in the hearing under this section. After any
3 waiver, a rehearing shall be granted at the request of the parent, guardian, legal
4 custodian, Indian custodian, or any other interested party for good cause shown.

5 **SECTION 247.** 938.21 (3) (b) of the statutes is amended to read:

6 938.21 (3) (b) If present at the hearing, a copy of the petition or request shall
7 be given to the parent, guardian, ~~or~~ legal custodian, or Indian custodian, and to the
8 juvenile if he or she is 12 years of age or older, before the hearing begins. Prior notice
9 of the hearing shall be given to the juvenile's parent, guardian, and legal custodian,
10 and Indian custodian and to the juvenile if he or she is 12 years of age or older under
11 s. 938.20 (8). *upon a determination of indigency*

12 **SECTION 248.** 938.21 (3) (d) of the statutes is amended to read:

13 938.21 (3) (d) Prior to the commencement of the hearing, the court shall inform
14 the parent, guardian, ~~or~~ legal custodian, or Indian custodian of the allegations that
15 have been made or may be made, the nature and possible consequences of this
16 hearing as compared to possible future hearings, the right to present, confront, and
17 cross-examine witnesses, ~~and the right to present witnesses~~ and, in the case of a
18 parent or Indian custodian of an Indian juvenile, the right to counsel under s.
19 938.028 (4) (b) regardless of ability to pay

20 **SECTION 249.** 938.21 (3) (e) of the statutes is amended to read:

21 938.21 (3) (e) If the parent, guardian, ~~or~~ legal custodian, Indian custodian, or
22 the juvenile is not represented by counsel at the hearing and if the juvenile is
23 continued in custody as a result of the hearing, the parent, guardian, legal custodian,
24 Indian custodian, or juvenile may request through counsel subsequently appointed
25 or retained or through a guardian ad litem that the order to hold the juvenile in

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1 custody be reheard. If the request is made, a rehearing shall take place as soon as
2 possible. An order to hold the juvenile in custody shall be reheard for good cause,
3 whether or not counsel was present.

4 **SECTION 250.** 938.21 (5) (d) 1. of the statutes is renumbered 938.21 (5) (d) and
5 amended to read:

6 938.21 (5) (d) If the court finds that any of the circumstances specified in s.
7 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing
8 under s. 938.38 (4m) within 30 days after the date of that finding to determine the
9 permanency plan for the juvenile. ~~If a hearing is held under this subdivision, the~~
10 ~~agency responsible for preparing the permanency plan shall file the permanency~~
11 ~~plan with the court not less than 5 days before the date of the hearing.~~

12 **SECTION 251.** 938.21 (5) (d) 2. of the statutes is repealed.

13 **SECTION 252.** 938.21 (5) (d) 3. of the statutes is repealed.

14 **SECTION 253.** 938.23 (2g) of the statutes is created to read:

15 938.23 (2g) RIGHT OF INDIAN JUVENILE'S PARENT OR INDIAN CUSTODIAN TO COUNSEL.

16 Whenever an Indian juvenile is the subject of a proceeding under s. 938.13 (4), (6),
17 (6m), or (7) involving the removal of the Indian juvenile from his or her home or the
18 placement of the Indian juvenile in an out-of-home care placement, the Indian
19 juvenile's parent or Indian custodian upon a determination of indigency as provided
20 in sub. (4) shall have the right to be represented by court-appointed counsel.

21 **SECTION 254.** 938.23 (3) of the statutes is amended to read:

22 938.23 (3) POWER OF THE COURT TO APPOINT COUNSEL. ~~Except as provided in this~~
23 ~~subsection, at~~ At any time, upon request or on its own motion, the court may appoint
24 counsel for the juvenile or any party, unless the juvenile or the party has or wishes

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1 ~~to retain counsel of his or her own choosing. The court may not appoint counsel for~~
2 ~~any party other than the juvenile in a proceeding under s. 938.13.~~

3 **SECTION 255.** 938.23 (4) of the statutes is amended to read:

4 938.23 (4) PROVIDING COUNSEL. If a juvenile has a right to be represented by
5 counsel or is provided counsel at the discretion of the court under this section and
6 counsel is not knowingly and voluntarily waived, the court shall refer the juvenile
7 to the state public defender and counsel shall be appointed by the state public
8 defender under s. 977.08 without a determination of indigency. In any situation
9 under sub. (2g) in which a parent 18 years of age or over is entitled to representation
10 by counsel; counsel is not knowingly and voluntarily waived; and it appears that the
11 parent is unable to afford counsel in full, or the parent so indicates; the court shall
12 refer the parent to the authority for indigency determinations specified under s.
13 977.07 (1). In any other situation under this section in which a person has a right
14 to be represented by counsel or is provided counsel at the discretion of the court,
15 competent and independent counsel shall be provided and reimbursed in any
16 manner suitable to the court regardless of the person's ability to pay, except that the
17 court may not order a person who files a petition under s. 813.122 or 813.125 to
18 reimburse counsel for the juvenile who is named as the respondent in that petition.

19 **SECTION 256.** 938.235 (4) (a) 7. of the statutes is amended to read:

20 938.235 (4) (a) 7. Petition for relief from a judgment terminating parental
21 rights under s. 48.028 or 48.46.

22 **SECTION 257.** 938.24 (2r) (a) (intro.) of the statutes is amended to read:

23 938.24 (2r) (a) (intro.) If the intake worker determines as a result of the intake
24 inquiry that the juvenile is an ~~American~~ Indian juvenile who has allegedly
25 committed a delinquent act and that all of the following circumstances apply, the

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21

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1 intake worker shall promptly notify the clerk of the tribal court under subd. 1., a
2 person who serves as the tribal juvenile intake worker, or a tribal prosecuting
3 attorney that the juvenile has allegedly committed a delinquent act under those
4 circumstances:

5 **SECTION 258.** 938.24 (2r) (a) 1. of the statutes is amended to read:

6 938.24 (2r) (a) 1. At the time of the delinquent act the juvenile was under an
7 order of a ~~tribe's~~ tribal court, other than a tribal court order relating to adoption,
8 physical placement or visitation with the juvenile's parent, or permanent
9 guardianship.

10 **SECTION 259.** 938.24 (2r) (a) 2. of the statutes is amended to read:

11 938.24 (2r) (a) 2. At the time of the delinquent act the juvenile was physically
12 outside the boundaries of ~~that tribe's~~ the reservation of the Indian tribe of the tribal
13 court and any off-reservation trust land of either that Indian tribe or a member of
14 that Indian tribe as a direct consequence of a tribal court order under subd. 1.,
15 including a tribal court order placing the juvenile in the home of a relative of the
16 juvenile who on or after the date of the tribal court order resides physically outside
17 the boundaries of a reservation and off-reservation trust land.

18 **SECTION 260.** 938.24 (2r) (b) of the statutes is amended to read:

19 938.24 (2r) (b) If the intake worker is notified by an official of the Indian tribe
20 that a petition relating to the delinquent act has been or may be filed in tribal court,
21 the intake worker shall consult with tribal officials, unless the intake worker
22 determines under sub. (4) that the case should be closed. After the consultation, the
23 intake worker shall determine whether the best interests of the juvenile and of the
24 public would be served by having the matter proceed solely in tribal court. If the
25 intake worker determines that the best interests of the juvenile and of the public

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1 would be served by having the matter proceed solely in tribal court, the intake
2 worker shall close the case. If the intake worker determines that the best interests
3 of the juvenile and of the public would not be served by having the matter proceed
4 solely in tribal court, the intake worker shall proceed under sub. (3) or (4).

5 **SECTION 261.** 938.243 (1) (e) of the statutes is amended to read:

6 938.243 (1) (e) The right of the juvenile to counsel under s. 938.23.

7 ~~**SECTION 262.** 938.243 (3) of the statutes is amended to read:~~

8 938.243 (3) INFORMATION WHEN JUVENILE NOT AT INTAKE CONFERENCE OR HAS NOT
9 HAD CUSTODY HEARING. If the juvenile has not had a hearing under s. 938.21 and was
10 not present at an intake conference under s. 938.24, the intake worker shall notify
11 the juvenile, parent, guardian, and legal custodian, and Indian custodian as
12 appropriate of their basic rights under this section. The notice shall be given
13 verbally, either in person or by telephone, and in writing. The notice shall be given
14 in sufficient time to allow the juvenile, parent, guardian, or legal custodian, or Indian
15 custodian to prepare for the plea hearing. This subsection does not apply to cases of
16 deferred prosecution under s. 938.245.

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17 **SECTION 263.** 938.255 (1) (cm) of the statutes is amended to read:

18 938.255 (1) (cm) If the petition is initiating proceedings ~~other than proceedings~~
19 ~~under s. 938.12, 938.125 or 938.13 (12)~~ under s. 938.13 (4), (6), (6m), or (7), whether
20 the juvenile may be subject to the federal Indian Child Welfare Act, 25 USC 1901 to
21 1963, and, if the juvenile may be subject to that act, the names and addresses of the
22 juvenile's Indian custodian, if any, and Indian tribe, if known.

23 **SECTION 264.** 938.255 (1) (cr) 1. a. of the statutes is amended to read:

24 938.255 (1) (cr) 1. a. The juvenile is an American Indian juvenile.

25 **SECTION 265.** 938.255 (1) (cr) 1. b. of the statutes is amended to read:

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1 938.255 (1) (cr) 1. b. At the time of the alleged delinquent act, the juvenile was
2 under an order of a ~~tribe's~~ tribal court, other than a tribal court order relating to
3 adoption, physical placement or visitation with the juvenile's parent, or permanent
4 guardianship.

5 **SECTION 266.** 938.255 (1) (cr) 1. c. of the statutes is amended to read:

6 938.255 (1) (cr) 1. c. At the time of the delinquent act the juvenile was
7 physically outside the boundaries of ~~that tribe's~~ the reservation of the Indian tribe
8 of the tribal court and any off-reservation trust land of either that Indian tribe or a
9 member of that Indian tribe as a direct consequence of a tribal court order under
10 subd. 1. b., including a tribal court order placing the juvenile in the home of a relative
11 of the juvenile who on or after the date of the tribal court order resides physically
12 outside the boundaries of a reservation and off-reservation trust land.

13 **SECTION 267.** 938.255 (1) (cr) 2. of the statutes is amended to read:

14 938.255 (1) (cr) 2. If the statement under subd. 1. is included in the petition and
15 if the intake worker, district attorney, or corporation counsel has been notified by an
16 official of the Indian tribe that a petition relating to the delinquent act has been or
17 may be filed in tribal court with respect to the alleged delinquent act, a statement
18 to that effect.

19 **SECTION 268.** 938.255 (1) (g) of the statutes is created to read:

20 938.255 (1) (g) If the juvenile is or may be an Indian juvenile and is alleged to
21 come within the provisions of s. 938.13 (4), (6), (6m), or (7), reliable and credible
22 information showing that continued custody of the juvenile by the juvenile's parent
23 or Indian custodian is likely to result in serious emotional or physical damage to the
24 juvenile under s. 938.028 (4) (d) 1. and reliable and credible information showing that
25 the person who took the juvenile into custody and the intake worker have made

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1 active efforts under s. 938.028 (4) (d) 2. to prevent the breakup of the Indian family
2 and that those efforts have proved unsuccessful. If the juvenile is or may be an
3 Indian juvenile, is alleged to come within the provisions of s. 938.13 (4), (6), (6m), or
4 (7), and is being held in custody outside of his or her home, the petition shall set forth
5 with specificity both the information required under this paragraph and the
6 information required under par. (f).

7 **SECTION 269.** 938.255 (2) of the statutes is amended to read:

8 938.255 (2) If any of the facts in sub. (1) (a) to (cr) ~~and~~, (f), and (g) are not known
9 or cannot be ascertained by the petitioner, the petition shall so state.

10 **SECTION 270.** 938.255 (4) of the statutes is amended to read:

11 938.255 (4) COPY TO JUVENILE, PARENTS, AND OTHERS. A copy of the petition shall
12 be given to the juvenile and to the parents, guardian, legal custodian and physical
13 custodian. If the juvenile is an Indian juvenile who is alleged to come within the
14 provisions of s. 938.13 (4), (6), (6m), or (7), a copy of the petition shall also be given
15 to the Indian juvenile's Indian custodian and tribe.

16 **SECTION 271.** 938.27 (3) (a) 1. of the statutes is amended to read:

17 938.27 (3) (a) 1. The court shall notify, under s. 938.273, the juvenile, any
18 parent, guardian, and legal custodian of the juvenile, any foster parent, treatment
19 foster parent, or other physical custodian described in s. 48.62 (2) of the juvenile, and
20 any person specified in par. (b) or (d), if applicable, of all hearings involving the
21 juvenile under this subchapter, except hearings on motions for which notice must be
22 provided only to the juvenile and his or her counsel. If parents entitled to notice have
23 the same place of residence, notice to one constitutes notice to the other. The first
24 notice to any interested party, foster parent, treatment foster parent, or other
25 physical custodian described in s. 48.62 (2) shall be in writing and may have a copy

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1 of the petition attached to it. Notices of subsequent hearings may be given by
2 telephone at least 72 hours before the time of the hearing. The person giving
3 telephone notice shall place in the case file a signed statement of the date and time
4 notice was given and the person to whom he or she spoke.

5 **SECTION 272.** 938.27 (3) (d) of the statutes is created to read:

6 938.27 (3) (d) If the petition that was filed relates to facts concerning a situation
7 under s. 938.13 (4), (6), (6m), or (7) involving an Indian juvenile, the court shall notify,
8 under s. 938.273, the Indian juvenile's Indian custodian and tribe and that Indian
9 custodian or tribe may intervene at any point in the proceeding.

10 **SECTION 273.** 938.27 (4) (b) of the statutes is amended to read:

11 938.27 (4) (b) Advise the juvenile and any other party, if applicable, of his or
12 her right to legal counsel regardless of ability to pay.

13 **SECTION 274.** 938.273 (1) (a) of the statutes of the statutes is amended to read:

14 938.273 (1) (a) Service of summons or notice required by s. 938.27 may be made
15 by mailing a copy of the summons and notice to the persons person summoned or
16 notified. If

17 (ar) Except as provided in par. (b), if the persons person, other than a person
18 specified in s. 938.27 (4m), fail fails to appear at the hearing or otherwise to
19 acknowledge service, a continuance shall be granted, ~~except as provided in par. (b),~~
20 and service shall be made personally by delivering to the persons person a copy of the
21 summons or notice; except that if the court determines that it is impracticable to
22 serve the summons or notice personally, it the court may order service by certified
23 mail addressed to the last-known addresses address of the persons person.

24 **SECTION 275.** 938.273 (1) (ag) of the statutes is created to read:

Except as provided
in pars. (ag) and
and (b) service

Or

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1 938.273 (1) (ag) In a proceeding under s. 938.13 (4), (6), (6m), or (7), service of
2 summons or notice required by s. 938.27 to an Indian juvenile's parent, Indian
3 custodian, or tribe shall be made as provided in s. 938.028 (4) (a).

4 **SECTION 276.** 938.273 (1) (b) of the statutes is amended to read:

5 938.273 (1) (b) The court may refuse to grant a continuance when the juvenile
6 is being held in secure custody, but if the court so refuses, ~~it~~ the court shall order that
7 service of notice of the next hearing be made personally or by certified mail to the
8 last-known address of the person who failed to appear at the hearing.

9 **SECTION 277.** 938.273 (1) (c) of the statutes is renumbered 938.273 (1) (c)
10 (intro.) and amended to read:

11 938.273 (1) (c) (intro.) Personal service shall be made at least 72 hours before
12 the hearing. Mail shall be sent at least 7 days before the hearing, except ~~that when~~
13 as follows:

14 1. When the petition is filed under s. 938.13 and the person to be notified lives
15 outside the state, the mail shall be sent at least 14 days before the hearing.

16 **SECTION 278.** 938.273 (1) (c) 2. of the statutes is created to read:

17 938.273 (1) (c) 2. When a petition under s. 938.13 (4), (6), (6m), or (7) involves
18 an Indian juvenile and the person to be notified is the Indian juvenile's parent,
19 Indian custodian, or tribe, the mail shall be sent so that it is received by the person
20 to be notified ~~not by the U.S. secretary of interior~~ at least 10 days before the time of

21 the hearing or by the U.S. Secretary of the Interior at least 25 days
 before the time of the hearing

22 **SECTION 279.** 938.299 (6) (d) of the statutes is amended to read:

23 938.299 (6) (d) The court may stay the proceedings under this chapter pending
24 the outcome of the paternity proceedings under subch. IX of ch. 767 if the court
25 determines that the paternity proceedings will not unduly delay the proceedings

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1 under this chapter and the determination of paternity is necessary to the court's
2 disposition of the juvenile if the juvenile is found to be in need of protection or services
3 or if the court determines that the paternity proceedings may result in a finding that
4 the juvenile is an Indian juvenile and in a petition by the juvenile's parent, Indian
5 custodian, or tribe for transfer of the proceeding to the jurisdiction of the tribe.

6 **SECTION 280.** 938.299 (9) (a) of the statutes is amended to read:

7 938.299 (9) (a) If a petition under s. 938.12 or 938.13 (12) includes the
8 statement in s. 938.255 (1) (cr) 2. or if the court is informed during a proceeding under
9 s. 938.12 or 938.13 (12) that a petition relating to the delinquent act has been filed
10 in a tribe's tribal court with respect to a juvenile to whom the circumstances specified
11 in s. 938.255 (1) (cr) 1. apply, the court shall stay the proceeding and communicate
12 with the tribal court in which the other proceeding is or may be pending to discuss
13 which court is the more appropriate forum.

14 **SECTION 281.** 938.299 (10) of the statutes is created to read:

15 938.299 (10) If at any point in a proceeding under s. 938.13 (4), (6), (6m), or (7)
16 the court determines that the juvenile is or may be an Indian juvenile, the court shall
17 provide notice of the proceeding to the juvenile's parent, Indian custodian, and tribe
18 in the manner specified in s. 938.028 (4) (a). The next hearing in the proceeding may
19 not be held until at least 10 days after receipt of the notice by the parent, Indian
20 custodian, and tribe. On request of the parent, Indian custodian, or tribe, the court
21 shall grant a continuance of up to 20 additional days to enable the requester to
22 prepare for that hearing.

23 **SECTION 282.** 938.30 (1) of the statutes is amended to read:

24 938.30 (1) TIME OF HEARING. Except as provided in this subsection and s.
25 938.299 (10), the hearing to determine the juvenile's plea to a citation or a petition

or until at least 25 days after receipt
of the notice by the U.S. Secretary of the
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1 under s. 938.12, 938.125, or 938.13 (12) or (14), or to determine whether any party
2 wishes to contest an allegation that the juvenile is in need of protection or services
3 under s. 938.13 (4), (6), (6m), or (7) ~~or (14)~~ shall take place on a date which allows
4 reasonable time for the parties to prepare but is within 30 days after the filing of a
5 petition or issuance of a citation for a juvenile who is not being held in secure custody
6 or within 10 days after the filing of a petition or issuance of a citation for a juvenile
7 who is being held in secure custody. In a municipal court operated jointly by 2 or more
8 cities, towns or villages under s. 755.01 (4), the hearing to determine the juvenile's
9 plea shall take place within 45 days after the filing of a petition or issuance of a
10 citation for a juvenile who is not being held in secure custody.

11 **SECTION 283.** 938.30 (2) of the statutes is amended to read:

12 938.30 (2) INFORMATION TO JUVENILE AND PARENTS; BASIC RIGHTS; SUBSTITUTION.
13 At or before the commencement of the hearing under this section the juvenile and
14 the parent, guardian, ~~or~~ legal custodian, or Indian custodian shall be advised of their
15 rights as specified in s. 938.243 and shall be informed that the hearing shall be to the
16 court and that a request for a substitution of judge under s. 938.29 must be made
17 before the end of the plea hearing or is waived. Nonpetitioning parties, including the
18 juvenile, shall be granted a continuance of the plea hearing if they wish to consult
19 with an attorney on the request for a substitution of a judge.

20 **SECTION 284.** 938.30 (6) (a) of the statutes is amended to read:

21 938.30 (6) (a) If a petition is not contested, the court, subject to s. 938.299 (10),
22 shall set a date for the dispositional hearing which allows reasonable time for the
23 parties to prepare but is no more than 10 days from the plea hearing for a juvenile
24 who is held in secure custody and no more than 30 days from the plea hearing for a
25 juvenile who is not held in secure custody. If all parties consent the court may

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1 proceed immediately with the dispositional hearing. If a citation is not contested, the
2 court may proceed immediately to enter a dispositional order.

3 **SECTION 285.** 938.30 (7) of the statutes is amended to read:

4 **938.30 (7) CONTESTED PETITIONS OR CITATIONS; DATE FOR FACT-FINDING HEARING.**

5 If the petition or citation is contested, the court, subject to s. 938.299 (10), shall set
6 a date for the fact-finding hearing that allows a reasonable time for the parties to
7 prepare but is no more than 20 days ~~from~~ after the plea hearing for a juvenile who
8 is held in secure custody and no more than 30 days ~~from~~ after the plea hearing for
9 a juvenile who is not held in secure custody.

10 **SECTION 286.** 938.305 of the statutes is amended to read:

11 **938.305 Hearing upon the involuntary removal of a juvenile.**

12 Notwithstanding other time periods for hearings under this chapter, if a juvenile is
13 removed from the physical custody of the juvenile's parent or guardian under s.
14 938.19 (1) (c) or (d) 5. without the consent of the parent or guardian, the court, subject
15 to s. 938.299 (10), shall schedule a plea hearing and fact-finding hearing within 30
16 days after a request from the parent or guardian from whom custody was removed.
17 The plea hearing and fact-finding hearing may be combined. This time period may
18 be extended only with the consent of the requesting parent or guardian.

19 **SECTION 287.** 938.31 (7) (a) of the statutes is amended to read:

20 **938.31 (7) (a)** At the close of the fact-finding hearing, the court, subject to s.
21 938.299 (10), shall set a date for the dispositional hearing that allows a reasonable
22 time for the parties to prepare but is no more than 10 days after the fact-finding
23 hearing for a juvenile in secure custody and no more than 30 days after the
24 fact-finding hearing for a juvenile not held in secure custody. If all parties consent,
25 the court may immediately proceed with a dispositional hearing.

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SECTION 288. 938.315 (1) (a) 11. of the statutes is created to read:

938.315 (1) (a) 11. A continuance, not to exceed 20 days, granted at the request of the parent, Indian custodian, or tribe of a juvenile who is or may be an Indian juvenile to enable the requester to prepare for a proceeding under s. 938.13 (4), (6), (6m), or (7) involving the juvenile.

SECTION 289. 938.315 (2) of the statutes is amended to read:

938.315 (2) CONTINUANCE FOR GOOD CAUSE. A continuance may be granted by the court only upon a showing of good cause in open court or during a telephone conference under s. 807.13 on the record and only for so long as is necessary, taking into account the request or consent of the representative of the public under s. 938.09 or the parties, the request of a person specified in sub. (1) (a) 11., the interests of the victims, and the interest of the public in the prompt disposition of cases.

SECTION 290. 938.32 (1) (d) 1. of the statutes is renumbered 938.32 (1) (d) and amended to read:

938.32 (1) (d) If the court finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing under s. 938.38 (4m) within 30 days after the date of that finding to determine the permanency plan for the juvenile. ~~The agency responsible for preparing the permanency plan shall file the permanency plan with the court not less than 5 days before the date of the hearing.~~

SECTION 291. 938.32 (1) (d) 2. of the statutes is repealed.

SECTION 292. 938.32 (1) (d) 3. of the statutes is repealed.

SECTION 293. 938.33 (4) (d) of the statutes is created to read:

938.33 (4) (d) In the case of a proceeding under s. 938.13 (4), (6), (6m), or (7), if the agency knows or has reason to know that the juvenile is an Indian juvenile, a

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SECTION 293

described S. 938.028 (6) (d) ^
, as described in S. 938.028 (6) (d) ^

1 description of any efforts undertaken to determine whether the juvenile is an Indian
2 juvenile; specific information showing that continued custody of the juvenile by the
3 parent or Indian custodian is likely to result in serious emotional or physical damage
4 to the juvenile, under s. 938.028 (4) (d) 1.; specific information showing that the
5 county department or agency primarily responsible for providing services to the
6 juvenile has made active efforts under s. 938.028 (4) (d) 2. to prevent the breakup of
7 the Indian family and that those efforts have proved unsuccessful; a statement as to
8 whether the out-of-home care placement recommended is in compliance with the
9 order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6)
10 (b); and, if the recommended placement is not in compliance with that order, specific
11 information showing good cause for departure from that order.

12 **SECTION 294.** 938.335 (3j) of the statutes is created to read:

13 938.335 (3j) INDIAN JUVENILE; ACTIVE EFFORTS FINDING. At hearings under this
14 section involving an Indian juvenile who is the subject of a proceeding under s. 938.13
15 (4), (6), (6m), or (7), if the agency, as defined in s. 938.38 (1) (a), is recommending
16 placement of the Indian juvenile in a foster home, treatment foster home, group
17 home, or residential care center for children and youth or in the home of a relative
18 other than a parent, the agency shall present as evidence specific information
19 showing all of the following:

20 (a) That continued custody of the Indian juvenile by the parent or Indian
21 custodian is likely to result in serious emotional or physical damage to the Indian
22 juvenile under s. 938.028 (4) (d) 1.

23 (b) That the county department or agency primarily responsible for providing
24 services to the Indian juvenile has made active efforts under s. 938.028 (4) (d) 2. to

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1 prevent the breakup of the Indian family and that those efforts have proved
2 unsuccessful. *as described in S. 938.028 (6)(2)*

3 (c) That the placement recommended is in compliance with the order of
4 placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b) or,
5 if that placement is not in compliance with that order, good cause for departing from
6 that order. *unless the court finds good cause, as described in S. 938.028 (6)(2), for departing from that order*

7 **SECTION 295.** 938.345 (1m) of the statutes is created to read:

8 938.345 (1m) INDIAN JUVENILE; PLACEMENT PREFERENCES. (a) Subject to s.
9 938.028 (6) (b), if the juvenile is an Indian juvenile who is in need of protection or
10 services under s. 938.13 (4), (6), (6m), or (7) and who is being placed in an
11 out-of-home care placement, as defined in s. 938.028 (2) (c), the court shall designate
12 one of the placements specified in s. 938.028 (6) (a) 1. to 4. as the placement for the
13 Indian juvenile, in the order of preference listed.

14 **SECTION 296.** 938.355 (2) (b) 6v. of the statutes is created to read:

15 938.355 (2) (b) 6v. If the juvenile is an Indian juvenile who is in need of
16 protection or services under s. 983.13 (4), (6), (6m), or (7) and who is placed outside
17 the home, a finding supported by clear and convincing evidence, including the
18 testimony of one or more qualified expert witnesses, that continued custody of the
19 Indian juvenile by the parent or Indian custodian is likely to result in serious
20 emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1. and a finding
21 supported by clear and convincing evidence as to whether the county department or
22 agency primarily responsible for providing services under a court order has made
23 active efforts under s. 938.028 (4) (d) 2. to prevent the breakup of the Indian family

24 and that those efforts have proved unsuccessful. *to be the same finding*

25 **SECTION 297.** 938.355 (2) (d) of the statutes is amended to read:

The findings under this subdivision shall be in addition to the findings under Subd. 6, except that for the sole purpose of determining whether the cost of providing care for an Indian child is eligible for reimbursement under the use 670 to 679, the findings under this subdivision and the findings under subd. 6 shall be considered

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1 938.355 (2) (d) The court shall provide a copy of the dispositional order to the
2 juvenile's parent, guardian, legal custodian, or trustee and, if the juvenile is an
3 Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m),
4 or (7), to the Indian juvenile's Indian custodian and tribe.

5 **SECTION 298.** 938.355 (2d) (c) 1. of the statutes is renumbered 938.355 (2d) (c)
6 and amended to read:

7 938.355 (2d) (c) If the court finds that any of the circumstances under par. (b)
8 1. to 4. applies with respect to a parent, the court shall hold a hearing under s. 938.38
9 (4m) within 30 days after the date of that finding to determine the permanency plan
10 for the juvenile. ~~If a hearing is held under this subdivision, the agency responsible~~
11 ~~for preparing the permanency plan shall file the permanency plan with the court not~~
12 ~~less than 5 days before the date of the hearing.~~

13 **SECTION 299.** 938.355 (2d) (c) 2. of the statutes is repealed.

14 **SECTION 300.** 938.355 (2d) (c) 3. of the statutes is repealed.

15 **SECTION 301.** 938.355 (6) (an) 1. of the statutes is amended to read:

16 938.355 (6) (an) 1. If a juvenile who has violated a municipal ordinance, other
17 than an ordinance enacted under s. 118.163 (1m) or (2), violates a condition of a
18 dispositional order imposed by the municipal court, the municipal court may petition
19 the court assigned to exercise jurisdiction under this chapter and ch. 48 to impose
20 on the juvenile the sanction under par. (d) 1. or the sanction under par. (d) 3., with
21 monitoring by an electronic monitoring system. A sanction may be imposed under
22 this subdivision only if, at the time of the judgment, the municipal court explained
23 the conditions to the juvenile and informed the juvenile of those possible sanctions
24 for a violation or if before the violation the juvenile has acknowledged in writing that
25 he or she has read, or has had read to him or her, those conditions and possible

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1 sanctions and that he or she understands those conditions and possible sanctions.
2 The petition shall contain a statement of whether the juvenile may be subject to the
3 federal Indian Child Welfare Act, 25 USC 1911 to 1963, and, if the juvenile may be
4 subject to that act, the names and addresses of the juvenile's Indian custodian, if any,
5 and tribe, if known.

6 **SECTION 302.** 938.355 (6) (b) of the statutes is amended to read:

7 938.355 (6) (b) *Motion to impose sanction.* A motion for imposition of a sanction
8 may be brought by the person or agency primarily responsible for the provision of
9 dispositional services, the district attorney or corporation counsel, or the court that
10 entered the dispositional order. If the court initiates the motion, that court is
11 disqualified from holding a hearing on the motion. Notice of the motion shall be given
12 to the juvenile, guardian ad litem, counsel, parent, guardian, legal custodian, and all
13 parties present at the original dispositional hearing. The motion shall contain a
14 statement of whether the juvenile may be subject to the federal Indian Child Welfare
15 Act, 25 USC 1911 to 1963 and, if the juvenile may be subject to that act, the names
16 and addresses of the juvenile's Indian custodian, if any, and tribe, if known.

17 **SECTION 303.** 938.355 (6) (bm) of the statutes is created to read:

18 938.355 (6) (bm) *Indian juvenile; notice.* If the person initiating the motion
19 knows or has reason to know that the juvenile is an Indian juvenile who has been
20 found to be in need of protection or services under s. 938.13 (4), (6), (6m), or (7) or who
21 has been adjudged to have violated a civil law or ordinance, notice under par. (b) to
22 the Indian juvenile's parent shall be provided in the manner specified in s. 938.028
23 (4) (a). In like manner, the court shall also notify the Indian juvenile's Indian
24 custodian and tribe. No hearing may be held under par. (c) until at least 10 days after
25 receipt of the notice by the Indian juvenile's parent, Indian custodian, and tribe. On

or until at least 25 days after receipt of the notice by
the U.S. secretary of the interior

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SECTION 303

1 request of the Indian juvenile's parent, Indian custodian, or tribe, the court shall
2 grant a continuance of up to 20 additional days to enable the requester to prepare
3 for the hearing.

4 **SECTION 304.** 938.355 (6) (cr) of the statutes is created to read:

5 938.355 (6) (cr) *Indian juvenile; findings.* The court may not order the sanction
6 of placement in a place of nonsecure custody specified in par. (d) 1. for an Indian
7 juvenile who has been found to be in need of protection or services under s. 983.13
8 (4), (6), (6m), or (7) or who has been adjudged to have violated a civil law or ordinance
9 unless the court finds by clear and convincing evidence, including the testimony of
10 one or more qualified expert witnesses, that continued custody of the Indian juvenile
11 by the parent or Indian custodian is likely to result in serious emotional or physical
12 damage to the juvenile under s. 938.028 (4) (d) 1. and that the agency primarily
13 responsible for providing services for the Indian juvenile has made active efforts
14 under s. 938.028 (4) (d) 2. to prevent the breakup of the Indian family and that those
15 efforts have proved unsuccessful.

16 **SECTION 305.** 938.355 (6m) (am) 1. of the statutes is amended to read:

17 938.355 (6m) (am) 1. If a juvenile who has violated a municipal ordinance
18 enacted under s. 118.163 (2) violates a condition of a dispositional order imposed by
19 the municipal court, the municipal court may petition the court assigned to exercise
20 jurisdiction under this chapter and ch. 48 to impose on the juvenile the sanction
21 specified in par. (a) 1g. A sanction may be imposed under this subdivision only if, at
22 the time of the judgment the municipal court explained the conditions to the juvenile
23 and informed the juvenile of that possible sanction or if before the violation the
24 juvenile has acknowledged in writing that he or she has read, or has had read to him
25 or her, those conditions and that possible sanction and that he or she understands

The findings under this paragraph ~~shall~~ shall be in addition to the findings under par (6m) except that for the sole purpose of determining whether the cost of providing care for an Indian juvenile is eligible for reimbursement under 42 USC 6701 to 6793, the findings under this paragraph and the findings under par (6m) shall be considered to be the same findings

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1 those conditions and that possible sanction. The petition shall contain a statement
2 of whether the juvenile may be subject to the federal Indian Child Welfare Act, 25
3 USC 1911 to 1963, and, if the juvenile may be subject to that act, the names and
4 addresses of the juvenile's Indian custodian, if any, and tribe, if known.

5 **SECTION 306.** 938.355 (6m) (bm) of the statutes is created to read:

6 938.355 (6m) (bm) *Indian juvenile; notice.* If the person initiating the motion
7 knows or has reason to know that the juvenile is an Indian juvenile, notice under par.
8 (b) to the Indian juvenile's parent shall be provided in the manner specified in s.
9 938.028 (4) (a). In like manner, the court shall also notify the Indian juvenile's Indian
10 custodian and tribe. No hearing may be held under par. (c) until at least 10 days after
11 receipt of the notice by the Indian juvenile's parent, Indian custodian, and tribe. On
12 request of the Indian juvenile's parent, Indian custodian, or tribe, the court shall
13 grant a continuance of up to 20 additional days to enable the requester to prepare
14 for the hearing. *or until at least 25 days after receipt of the notice by
the U.S. Secretary of the Interior*

15 **SECTION 307.** 938.355 (6m) (c) of the statutes is amended to read:

16 938.355 (6m) (c) *Sanction hearing.* Before imposing a sanction under par. (a)
17 or (ag), the court shall hold a hearing at which the juvenile is entitled to be
18 represented by legal counsel and to present evidence. The Except as provided in par.
19 (bm), the hearing shall be held within 15 days after the filing of a motion under par.
20 (b).

21 **SECTION 308.** 938.355 (6m) (cr) of the statutes is created to read:

22 938.355 (6m) (cr) *Indian juvenile; findings.* The court may not order the
23 sanction of placement in a place of nonsecure custody specified in par. (a) 1g. for an
24 Indian juvenile unless the court finds by clear and convincing evidence, including the
25 testimony of one or more qualified expert witnesses, that continued custody of the

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1 Indian juvenile by the parent or Indian custodian is likely to result in serious
 2 emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1. and that the
 3 agency primarily responsible for providing services for the Indian juvenile has made
 4 active efforts under s. 938.028 (4) (d) 2. to prevent the breakup of the Indian family
 5 and that those efforts have proved unsuccessful.

6 **SECTION 309.** 938.357 (1) (am) 1. of the statutes is amended to read:

7 938.357 (1) (am) 1. If the proposed change in placement involves any change
 8 in placement other than a change in placement under par. (c), the person or agency
 9 primarily responsible for implementing the dispositional order or the district
 10 attorney shall cause written notice of the proposed change in placement to be sent
 11 to the juvenile, the parent, guardian, and legal custodian of the juvenile, and any
 12 foster parent, treatment foster parent, or other physical custodian described in s.
 13 48.62 (2) of the juvenile. If the juvenile is an Indian juvenile who is in need of
 14 protection or services under s. 938.13 (4), (6), (6m), or (7), written notice shall also
 15 be sent to the Indian juvenile's Indian custodian and tribe. The notice shall contain
 16 the name and address of the new placement, the reasons for the change in placement,
 17 a statement describing why the new placement is preferable to the present
 18 placement, and a statement of how the new placement satisfies objectives of the
 19 treatment plan ordered by the court.

20 **SECTION 310.** 938.357 (1) (am) 1g. of the statutes is created to read:

21 938.357 (1) (am) 1g. If the juvenile is an Indian juvenile who is in need of
 22 protection or services under s. 938.13 (4), (6), (6m), or (7), a notice under subd. 1. shall
 23 also contain specific information showing that continued custody of the Indian
 24 juvenile by the parent or Indian custodian is likely to result in serious emotional or
 25 physical damage to the juvenile under s. 938.028 (4) (d) 1., specific information

And if the proposed change in placement would change the Indian
 juvenile's placement from a placement outside the home to another
 placement outside the home

the x things
 sole purpose of determining whether the cost of providing care for an Indian juvenile is eligible for reimbursement under 42 USC 6756b-6796b the findings under this paragraph and the findings under par. (c) shall be considered the same findings

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(d)
↑ as described in s. 938.028 (6) (d) ↑

1 showing that the agency primarily responsible for implementing the dispositional
2 order has made active efforts under s. 938.028 (4) (d) 2. to prevent the breakup of the
3 Indian family and that those efforts have proved unsuccessful, a statement as to
4 whether the new placement is in compliance with the order of placement preference
5 under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b) and, if the new placement
6 is not in compliance with that order, specific information showing good cause for
7 departing from that order. or until at least 25 days after receipt of the
notice by the U.S. Secretary of the Interior

8 **SECTION 311.** 938.357 (1) (am) 1m. of the statutes is created to read:

9 938.357 (1) (am) 1m. In a proceeding involving an Indian juvenile who is in
10 need of protection or services under s. 938.13 (4), (6), (6m), or (7), notice under subd.
11 1. to the Indian juvenile's parent, Indian custodian, and tribe shall be provided in the
12 manner specified in s. 938.028 (4) (a). No hearing on the request may be held until
13 at least 10 days after receipt of the notice by the Indian juvenile's parent, Indian
14 custodian, and tribe. On request of the Indian juvenile's parent, Indian custodian,
15 or tribe, the court shall grant a continuance of up to 20 additional days to enable the
16 requester to prepare for the hearing.

17 **SECTION 312.** 938.357 (1) (am) 2. of the statutes is amended to read:

18 938.357 (1) (am) 2. Any person receiving the notice under subd. 1. or notice of
19 a specific foster or treatment foster placement under s. 938.355 (2) (b) 2. may obtain
20 a hearing on the matter by filing an objection with the court within 10 days after
21 receipt of the notice. Placements may not be changed until 10 days after that notice
22 is sent to the court unless the parent, guardian, or legal custodian and, or Indian
23 custodian, the juvenile, if 12 or more years of age, and the juvenile's tribe, if the
24 juvenile is an Indian juvenile who is in need of protection or services under s. 938.13
25 (4), (6), (6m), or (7), sign written waivers of objection, except that changes in

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unless the court finds good cause, as described in s. 938.028 (6)(2), for departing from that order,

placement that were authorized in the dispositional order may be made immediately if notice is given as required under ^{pink (no strike)} subd. 1. In addition, a hearing is not required for placement changes authorized in the dispositional order except when an objection filed by a person who received notice alleges that new information is available that affects the advisability of the court's dispositional order.

SECTION 313. 938.357 (1) (am) 3. of the statutes is amended to read:

~~938.357 (1) (am) 3. If the court changes the juvenile's placement from a placement outside the home to another placement outside the home, the change in placement order shall contain one of the statements under sub. (2v) (a) 2. If the court changes the placement of an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) from a placement outside the home to another placement outside the home, the change in placement order shall, in addition, comply with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b) and contain the findings under sub. (2v) (a) 4.~~

SECTION 314. 938.357 (1) (c) 1m. of the statutes is created to read:

938.357 (1) (c) 1m. If the juvenile is an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), a request under subd. 1. shall also contain specific information showing that continued custody of the Indian juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1., specific information showing that the agency primarily responsible for implementing the dispositional order has made active efforts under s. 938.028 (4) (d) 2. to prevent the breakup of the Indian family and that those efforts have proved unsuccessful, a statement as to whether the new placement is in compliance with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b) and, if the new placement

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938.
§ as described in s. 938.028 (b)(2),

1 is not in compliance with that order, specific information showing good cause for
2 departing from that order.

3 **SECTION 315.** 938.357 (1) (c) 2. of the statutes is amended to read:

4 938.357 (1) (c) 2. The court shall hold a hearing prior to ordering a change in
5 placement requested under subd. 1. At least 3 days prior to the hearing, the court
6 shall provide notice of the hearing, together with a copy of the request for the change
7 in placement, to the juvenile, the parent, guardian, and legal custodian of the
8 juvenile, ~~and all parties that are bound by the dispositional order, and, if the juvenile~~
9 is an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6),
10 (6m), or (7), the Indian juvenile's Indian custodian and tribe. If all parties consent,
11 the court may proceed immediately with the hearing.

or until at least 25 days
after receipt of the notice by
the USDO Secretary of the Interior

12 **SECTION 316.** 938.357 (1) (c) 2m. of the statutes is created to read:

13 938.357 (1) (c) 2m. In a proceeding involving an Indian juvenile who is in need
14 of protection or services under s. 938.13 (4), (6), (6m), or (7), notice under subd. 2. to
15 the Indian juvenile's parent, Indian custodian, and tribe shall be provided in the
16 manner specified in s. 938.028 (4) (a). No hearing on the request may be held until
17 at least 10 days after receipt of the notice by the Indian juvenile's parent, Indian
18 custodian, and tribe. On request of the Indian juvenile's parent, Indian custodian,
19 or tribe, the court shall grant a continuance of up to 20 additional days to enable the
20 requester to prepare for the hearing.

21 **SECTION 317.** 938.357 (1) (c) 3. of the statutes is amended to read:

22 938.357 (1) (c) 3. If the court changes the juvenile's placement from a placement
23 in the juvenile's home to a placement outside the juvenile's home, the change in
24 placement order shall contain the findings under sub. (2v) (a) 1., one of the
25 statements under sub. (2v) (a) 2., and, if in addition the court finds that any of the

BILL~~, unless the court finds good cause, as described~~**SECTION 317**~~in s. 938.029 (6) (2), for departing from that order,~~

1 circumstances under s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the
2 determination under sub. (2v) (a) 3. If the court changes the placement of an Indian
3 juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7)
4 from a placement in the ^{Indian} juvenile's home to a placement outside the ^{Indian} juvenile's home
5 the change in placement order shall, in addition, comply with the order of placement
6 preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b) and contain the
7 findings under sub. (2v) (a) 4.

8 **SECTION 318.** 938.357 (2m) (a) of the statutes is amended to read:

9 938.357 (2m) (a) *Request; information required.* The juvenile, the parent,
10 guardian, or legal custodian of the juvenile, or any person or agency primarily bound
11 by the dispositional order, other than the person or agency responsible for
12 implementing the order, or, if the juvenile is an Indian juvenile who is in need of
13 protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian
14 custodian may request a change in placement under this paragraph. The request
15 shall contain the name and address of the new placement requested and shall state
16 what new information is available that affects the advisability of the current
17 placement. If the proposed change in placement would change the placement of a
18 juvenile placed in the juvenile's home to a placement outside the home, the request
19 shall also contain specific information showing that continued placement of the
20 juvenile in the juvenile's home would be contrary to the welfare of the juvenile and,
21 unless any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies, specific
22 information showing that the agency primarily responsible for implementing the
23 dispositional order has made reasonable efforts to prevent the removal of the
24 juvenile from the home, while assuring that the juvenile's health and safety are the

BILL or would change the placement of an Indian juvenile placed outside the home to another placement outside the home

paramount concerns. The request shall be submitted to the court. The court may also propose a change in placement on its own motion.

SECTION 319. 938.357 (2m) (am) of the statutes is created to read:

938.357 (2m) (am) *Indian juvenile; information required.* If the proposed

change of placement would change the placement of an Indian juvenile placed in the

(6) ^{Indian} juvenile's home under s. 938.357 (4), (6), (6m), or (7) to a placement outside the

(7) ^{Indian} juvenile's home, a request under par. (a) shall also contain specific information

showing that continued custody of the Indian juvenile by the parent or Indian

custodian is likely to result in serious emotional or physical damage to the juvenile

under s. 938.028 (4) (d) 1., specific information showing that the agency primarily

responsible for implementing the dispositional order has made active efforts under

s. 938.028 (4) (d) 2. to prevent the breakup of the Indian family and that those efforts

have proved unsuccessful, a statement as to whether the new placement is in

compliance with the order of placement preference under s. 938.028 (6) (a) or, if

applicable, s. 938.028 (6) (b) and, if the new placement is not in compliance with that

(16) order, specific information showing good cause for departing from that order.

SECTION 320. 938.357 (2m) (b) of the statutes is amended to read:

938.357 (2m) (b) *Hearing; when required.* The court shall hold a hearing prior

to ordering any change in placement requested or proposed under par. (a) if the

request states that new information is available that affects the advisability of the

current placement. A hearing is not required if the requested or proposed change in

placement does not involve a change in placement of a juvenile placed in the

juvenile's home to a placement outside the juvenile's home, written waivers of

objection to the proposed change in placement are signed by all parties entitled to

receive notice under sub. (1) (am) 1. this paragraph, and the court approves. If a

as described in s. 938.028 (6) (d),

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SECTION 320

1 hearing is scheduled, not less than 3 days before the hearing the court shall notify
2 the juvenile, the parent, guardian, and legal custodian of the juvenile, any foster
3 parent, treatment foster parent, or other physical custodian described in s. 48.62 (2)
4 of the juvenile, and all parties who are bound by the dispositional order ~~at least 3~~
5 ~~days prior to the hearing, and, if the juvenile is an Indian juvenile who is in need of~~
6 ~~protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian~~
7 ~~custodian and tribe.~~ A copy of the request or proposal for the change in placement
8 shall be attached to the notice. If all of the parties consent, the court may proceed
9 immediately with the hearing. *or until at least 25 days after receipt of the notice by the U.S. Secretary of the Interior*

10 SECTION 321. 938.357 (2m) (bm) of the statutes is created to read:

11 938.357 (2m) (bm) *Indian juvenile; notice.* If the *proposed change in placement*
12 *would change the placement of an Indian juvenile placed in the juvenile's home*
13 *under s. 938.13 (4), (6), (6m), or (7) to a placement outside the juvenile's home,* notice
14 under par. (b) to the Indian juvenile's parent, Indian custodian, and tribe shall be
15 provided in the manner specified in s. 938.028 (4) (a). No hearing on the request or
16 proposal may be held until at least 10 days after receipt of the notice by the Indian
17 juvenile's parent, Indian custodian, and tribe. On request of the Indian juvenile's
18 parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20
19 additional days to enable the requester to prepare for the hearing.

20 SECTION 322. 938.357 (2m) (c) of the statutes is amended to read:

21 938.357 (2m) (c) *In-home to out-of-home placement; findings required.* If the
22 court changes the juvenile's placement from a placement in the juvenile's home to a
23 placement outside the juvenile's home, the change in placement order shall contain
24 the findings under sub. (2v) (a) 1., one of the statements under sub. (2v) (a) 2., and,
25 if in addition the court finds that any of the circumstances under s. 938.355 (2d) (b)

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SECTION 322

~~or from a placement outside the Indian juvenile's home to another placement outside the Indian juvenile's home~~

1. to 4. applies with respect to a parent, the determination under sub. (2v) (a) 3. If the court changes the placement of an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) from a placement in the juvenile's home to a placement outside the juvenile's home, the change in placement order shall, in addition, comply with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b) and contain the findings under sub. (2v) (a) 4.

SECTION 323. 938.357 (2v) (a) 4. of the statutes is created to read:

938.357 (2v) (a) 4. If the change in placement order changes the juvenile's placement from a placement in the Indian juvenile's home to a placement outside the Indian juvenile's home, a finding supported by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1. and a finding supported by clear and convincing evidence that the agency primarily responsible for implementing the dispositional order has made active efforts under s. 938.028 (4) (d) 2. to prevent the breakup of the Indian family and that those efforts have proved unsuccessful.

SECTION 324. 938.357 (2v) (c) 1. of the statutes is renumbered 938.357 (2v) (c) and amended to read:

938.357 (2v) (c) If the court finds under par. (a) 3. that any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing under s. 938.38 (4m) within 30 days after the date of that finding to determine the permanency plan for the juvenile. If a hearing is held under this paragraph, the agency responsible for preparing the permanency plan shall file the permanency plan with the court at least 5 days before the date of the hearing.

~~or from a placement outside the Indian juvenile's home to another placement outside the Indian juvenile's home~~

Under the court's order, the juvenile is placed in the home of the parent or Indian custodian. The court shall find that the parent or Indian custodian is unable to provide the juvenile with a safe and stable home environment. The court shall find that the parent or Indian custodian is unable to provide the juvenile with the necessary supervision and care. The court shall find that the parent or Indian custodian is unable to provide the juvenile with the necessary emotional and physical support. The court shall find that the parent or Indian custodian is unable to provide the juvenile with the necessary educational and social support. The court shall find that the parent or Indian custodian is unable to provide the juvenile with the necessary medical and dental support. The court shall find that the parent or Indian custodian is unable to provide the juvenile with the necessary transportation and housing support. The court shall find that the parent or Indian custodian is unable to provide the juvenile with the necessary financial support. The court shall find that the parent or Indian custodian is unable to provide the juvenile with the necessary legal support. The court shall find that the parent or Indian custodian is unable to provide the juvenile with the necessary cultural support. The court shall find that the parent or Indian custodian is unable to provide the juvenile with the necessary spiritual support. The court shall find that the parent or Indian custodian is unable to provide the juvenile with the necessary emotional and physical support. The court shall find that the parent or Indian custodian is unable to provide the juvenile with the necessary educational and social support. The court shall find that the parent or Indian custodian is unable to provide the juvenile with the necessary medical and dental support. The court shall find that the parent or Indian custodian is unable to provide the juvenile with the necessary transportation and housing support. The court shall find that the parent or Indian custodian is unable to provide the juvenile with the necessary financial support. The court shall find that the parent or Indian custodian is unable to provide the juvenile with the necessary legal support. The court shall find that the parent or Indian custodian is unable to provide the juvenile with the necessary cultural support. The court shall find that the parent or Indian custodian is unable to provide the juvenile with the necessary spiritual support.

of an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) to a placement outside the Indian juvenile's home, a finding supported by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1. and a finding supported by clear and convincing evidence that the agency primarily responsible for implementing the dispositional order has made active efforts under s. 938.028 (4) (d) 2. to prevent the breakup of the Indian family and that those efforts have proved unsuccessful. The court shall find that the parent or Indian custodian is unable to provide the juvenile with a safe and stable home environment. The court shall find that the parent or Indian custodian is unable to provide the juvenile with the necessary supervision and care. The court shall find that the parent or Indian custodian is unable to provide the juvenile with the necessary emotional and physical support. The court shall find that the parent or Indian custodian is unable to provide the juvenile with the necessary educational and social support. The court shall find that the parent or Indian custodian is unable to provide the juvenile with the necessary medical and dental support. The court shall find that the parent or Indian custodian is unable to provide the juvenile with the necessary transportation and housing support. The court shall find that the parent or Indian custodian is unable to provide the juvenile with the necessary financial support. The court shall find that the parent or Indian custodian is unable to provide the juvenile with the necessary legal support. The court shall find that the parent or Indian custodian is unable to provide the juvenile with the necessary cultural support. The court shall find that the parent or Indian custodian is unable to provide the juvenile with the necessary spiritual support.